HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 4488 (S/S) year 2001

Narendra Kumar S/oGhanshyam Singh.

Vs.

State of Uttaranchal and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 09.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.6

Civil Misc. W.P. No.4488 (S/S) 2001

Narendra Kumar S/o Ghanshyam Singh
R/o Angadpur P.O. Dharampur
District U.S. Nagar .... Petitioner.

Vs.

1. State of Uttaranchal
2. Director General Police Uttaranchal
   Dehradun.
3. Director General of Police State of U.P.
   Lucknow ... Respondents.

Counsel for petitioner **...Sri Khalil Ahmad.**
Counsel for respondents **...Sri B.D.Kandpal.**
Date of Judgment **... 09-10-2003**

Hon'ble Rajesh Tandon, J.

By means of this writ petition the petitioner has sought writ, order or direction in the nature of mandamus commanding the respondents not to relieve the petitioner from Uttar Pradesh to Uttaranchal State.

Heard Sri Khali Ahmad learned counsel for the petitioners, Sri B.D.Kandpal Standing Counsel for the respondents.

Brief facts giving rise to the writ petition are that the petitioner was posted as constable at P.S. Rehar District Bijnor. According to the case of the petitioner he has opted on 3rd of October 2000 for Uttar Pradesh. He alleged that he has been illegally relieved on 9th of June 2001 from Uttar Pradesh to Uttaranchal State.

The grievance of the petitioner is that since he has opted for Uttar Pradesh therefore he may not be relived from Uttar Pradesh to Uttaranchal State.

Counter affidavit has been field by the State of Uttaranchal. It has been stated in the counter affidavit that the petitioner was transferred from District Bijnor to the State of Uttaranchal by the State of U.P. on 9-6-2001 i.e. subsequent to the appointed day under the provisions of Reorganization Act 2000. According to the counsel for the State final allocation is still in the process as per section 73(2) of the U.P. Reorganization Act 2000.

Since no final allocation has taken place by the Government of India, the remedy to the petitioner was to approach the Central Govt. Further the transfer having taken place in the year 2001, the petition is highly belated.

After hearing both the parties it appears that the writ petition is premature and has been field only on the apprehension. Section 73(2) of the Reorganization Act provides as under:-

> ***"As soon as may be after the appointed day, the Central Government shall, by general or special order, determine the successor State to which every person referred to in sub-section (1) shall be finally allotted for service and the date with effect from which such allotment shall take effect or be deemed to have taken effect."***

The matter has already been decided by the Division Bench in Writ Petition No. 451 (S/B)/2003. Following observation was made by the Bench:

"Under section 73 of the U.P. Reorganization Act, 200, final allocation of all State services personnel between the successor States shall be decided by the Central Government. Till date, that decision has not been taken. Therefore, the petition is premature."

Similar matter was also decided by the Bench consisting of Hon'be P.C. Verma, J. His Lordship has passed the following order:-

> ***"Heard learned counsel for the parties. The controversy is squarely covered by the order passed by Division Bench of this Court in W.P.No.1426(S/B) of 2001, Mulayam Singh Vs. State of Uttaranchal and others, on 03-06-2003. The petitioners are also relegated to approach the Advisory Board with fresh representation and same be disposed of as observed in the aforesaid writ petition. With the aforesaid observation, the writ petition is disposed of."***

The petitioner therefore, is at liberty to approach the advisory Board with fresh representation if he is so advised. If such a representation is made the Union of India shall proceed to decide the same in accordance with law considering the option given by the petitioner for the State of U.P.

With these observations the writ petition is disposed of.

(Rajesh Tandon, J.)

Dated: 9.10.2003

ISB